IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

OP.No. 10983 of 2003(G)

PETITIONER:

JINS MATHEW, KANAMUNDAYIL HOUSE,
KADAMAKUZHY P.O., KATTAPPANA-685 515

BY ADV. SRI.T.H.ABDUL AZEEZ

RESPONDENTS:
---

1. THE AGRICULTURAL INCOME TAX AND SALES TAX OFFICER, COMMERCIAL TAXES, KATTAPPANA.

2. THE TAHSILDAR, (REVENUE RECOVERY), NEDUMKANDAM.

BY GOVERNMENT PLEADER – ADV. SMT. R.BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 10983/2003

ORDER ON I.A.No 11952/2003 IN CMP NO. 18983/2003 IN O.P.No. 10983/2003

DISMISSED.

06/02/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

ORDER ON CMP NO. 18983/2003 IN O.P.No. 10983/2003

DISMISSED.

06/02/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF SALE DEED NO.2477/1984 OF THE SUB-REGISTRAR'S OFFICE, KATTAPPANA.

EXT.P2 COPY OF ENCUMBRANCE CERTIFICATE DATED 25/03/2003 ISSUED TO MR. CHUKKANANIKKAL JOSEPH.

EXT.P2(a) COPY OF -DO- DATED 25/03/2003 ISSUED TO MR. PEROTH VARGHESE.

EXT.P2(b) COPY OF -DO- DATED 25/03/2003 ISSUED TO MR. VELLARAVEETTIL RAJAMMA.

EXT.P3 COPY OF NOTICE DATED 28/09/2002 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P4 COPY OF THE ASSESSEMENT ORDER FOR THE YEAR 79/80 ISSUED BY 1ST RESPONDENT TO SMT.SUBAIDA BEEVI DATED 09/03/87.

EXT.P5 COPY OF NOTICE DATED 19/10/2002 ISSUED TO THE PETITIONER BY 1ST RESPONDENT.

EXT.P6 COPY OF NOTICE DATED 13/11/2002 ISSUED BY 1ST RESONDENT TO THE PETITIONER.

EXT.P7 COPY OF NOTICE DATED NIL ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

EXT.P8 COPY OF NOTICE UNDER FORUM NO.10 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 10983 of 2003

Dated, this the 6th day of February, 2007

J U D G M E N T

Petitioner is challenging recovery proceedings for recovery of arrears of sales tax dues from the previous owner of the property. The petitioner's case is that he purchased only 2.5 acres of land from the defaulter, which the petitioner subsequently sold to three persons, but demand for arrears is for around 8.5 acres of land of the defaulter. Tax could be recovered from property transferred by the defaulter, if there is charge on such property as per statute. Secs. 26A and 26B of the KGST Act provides for charge on the properties of the defaulter for sales tax liability. Similarly, if notice is served under Sec. 44 of RR Act creates charge on property of the defaulter. Therefore, any subsequent transfer of property can be ignored and recovery can continue. Since the counter affidavit filed does not serve any purpose, I direct the Tahsildar to identify the property of the defaulter, consider validity of subsequent transfers and proceed for sale only after deciding the claim of petitioner and other claimants. If the petitioner

files any claim before the Tahsildar under Sec. 46 of the RR Act, it will be disposed of before sale of such properties. If any other property is found as part of the defaulter's property, it shall also be attached and sold, details of which will be furnished by the petitioner.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg